

REMARKS

The Examiner's action dated October 1, 2008, has been received, and its contents carefully noted.

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REQUEST FOR WITHDRAWAL OF FINALITY OF REJECTION

The Examiner's action contains a prior art rejection based on a newly cited reference.

A second or subsequent action on the merits in any application...should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed...for example, one would reasonably expect that a rejection under 35 U.S.C. 112 for the reason of incompleteness would be replied to by an amendment supplying the omitted element.

MPEP 706.07(a).

In the present case, the Examiner previously indicated that claims 21 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph. That rejection related to the recitation of a peripheral conformation and the Examiner suggested that a pair of conformations should be recited. In response, claim 21 was amended to specify that the plate has at least one peripheral

deformation (which term replaced conformation in view of other formal rejections) extending between two parts. Obviously, this amendment served to overcome the formal rejection, since no formal rejection was made in the last office action. Moreover, the newly cited reference contains no disclosure relating to the limitations appearing in claim 21.

Therefore, it is clear that the finality of the rejection presented in the last action was not necessitated by applicant's amendment to claim 21 and was therefore premature and had the effect of preventing applicant from making further amendments and presenting additional arguments, as a matter of right. It is therefore requested that the finality of the rejection be reconsidered and withdrawn.

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RENEWED REQUEST FOR CONSIDERATION OF CITED REFERENCES

The Examiner is referred to page 7 of the amendment filed on August 25, 2008, and it is again asked that the two references that were lined through in the attachment to the office action of May 23, 2008, and further copies of which were submitted with the amendment of August 25, 2008, be considered. It is noted, in this connection, that the Examiner has not indicated any reason for refusing to consider those references.

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The prior art rejection on the basis of a newly cited reference presented in the action is traversed for the reason that the claims of the present application define a cooking element that is neither disclosed in nor suggested by either one or any combination of the teachings of the applied references.

In the explanation of the rejection, the Examiner acknowledges that the primary reference does not disclose elongate depressions in a circumferential direction, but the Examiner asserts that this is disclosed in the secondary reference.

Before discussing the clear differences between the present claims and the above-mentioned applied references, it is believed in order to point out that the purpose of the present invention is to provide a removable perforated bottom for a steam cooker, the perforated bottom being provided with deformations that give the bottom a greater rigidity, and thus make possible the use of a thinner plate.

Neither of the applied references is concerned with achieving such a result.

Each of independent claims 1 and 25 specifies that the cooking element has a removable perforated bottom.

What the '235 reference discloses is a one-piece cooking element having a perforated bottom that is integral

with a side wall. Thus, the perforated bottom is supported by the tubular sidewall in a manner that provides better support than the arrangement of the primary reference, in which the perforated bottoms are constituted by parts that are separate from the tubular side wall. One skilled in the art would have no reason to believe that the perforated bottom of the '235 reference could be securely mounted in a side wall if it were made of a separate piece.

Each of claims 1 and 24 further specifies that the bottom comprises a plate that is made from a metal sheet, whereas the bottom disclosed in the '235 reference is made of plastic. One skilled in the art would have no reason to believe that a removable bottom made of plastic and having the form disclosed in the '235 reference would have the required rigidity. For this reason alone, one skilled in the art would have no reason to believe that such a removable bottom could be used successfully in the cooker of the primary reference. Furthermore, one skilled in the art would have no motivation to make the bottom disclosed in the '235 reference of metal.

In addition, each of independent claims 1 and 25 specifies that "each of said perforations is formed in the bottom of a respective depression". This clearly means that there is one perforation associated with each depression. This is clearly different from the structure disclosed in the

'235 patent, where it is clear that each trough in Section 40 contains a plurality of holes.

Independent claim 25 additionally specifies that the plate, which is made of a metal sheet, is "deformed to provide a plurality of depressions that add rigidity to said plate". If the troughs in perforated Section 40 of the '235 reference are circular, then it is abundantly clear that those troughs do not add to the rigidity of the bottom 32. Indeed, those skilled in the art would understand that such a structure actually promotes increased flexing of bottom 32.

Moreover, the '235 reference does not explicitly disclose that the troughs are circular. The reference specification simply states that Section 40 has a general circular ring shape and perforated Section 40 has a wavy surface. Specification, column 2, line 47-50. Whether the crests and troughs of that wavy surface extend around the circumference of perforated Section 40 is clearly a matter of conjecture. In this connection, it might be noted that Figure 1 of the '235 reference does not illustrate circular crests and troughs in the manner generally required for proper patent drawings. In other words, neither the drawings nor the specification of this reference can be considered to clearly disclose circular troughs.

Thus, claim 25 further distinguishes over any reasonable combination of the applied references by its recitation that the depressions "add rigidity to the plate", since neither of the applied references discloses a cooking element bottom having depressions that perform this function.

Claim 16 further distinguishes over the applied references by its recitation that at least certain ones of the perforations are elongated. While the primary reference discloses elongated orifices, these are not provided in deformations, as required by claim 16.

Claim 22 further distinguishes over the applied references by its recitation that the perforated bottom has an elliptical geometry, a shape that is not disclosed in any of the applied references.

The rejection of claims 11, 12 and 16 is also separately traversed.

The '198 patent certainly does not disclose elongated depressions that are distributed across the plate in the manner defined in claim 1 and are arranged in an alternating manner. Indeed, the '198 patent does not even disclose depressions having perforations in their bottoms. In this connection, reference is made to the discussion presented on page 14 of the previous amendment, which discussion is incorporated herein by reference.

Supplementing that discussion, it must be noted that only Figure 3 of that reference shows the configuration of a bottom and it is clear that the aperture 18 shown in that figure is not provided in a depression, as defined in claim 11.

Since the '198 patent does not disclose depressions, it cannot be said to disclose at least three series of depressions arranged in an alternating manner, as defined in claim 12.

In view of the foregoing, it is requested that the prior art rejections be reconsidered and withdrawn, that all of the claims be allowed and that the application be found in allowable condition.

In the present case, it is desired to discuss the suitability of an interview with the Examiner if the present response is not found to place the application in allowable condition. Accordingly, the Examiner is requested to telephone undersigned counsel after having considered this amendment. Counsel will take the liberty of telephoning the Examiner in about three weeks to determine the status of the application.

Respectfully submitted,

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